

Syllabus

IN THE MATTER OF

CAROLINE R. MACHER AND ROBERT J. MACHER, TRADING AS MACHER WATCH & JEWELRY CO. AND AS WHOLESALE WATCH & JEWELRY CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4087. Complaint, Apr. 12, 1940—Decision, Feb. 26, 1941

Where two individuals engaged in interstate sale and distribution at retail of watches and jewelry, silverware and other merchandise—

- (a) Falsely represented through use of words "Wholesale" and "Jobbers" in or in connection with trade names employed by them, and set forth in their catalogs, circulars, cards, and other advertising material, that they, retailers, were wholesalers or jobbers, dealt with, in preference to retailers, by a portion of purchasing public due to fact or belief that they thereby obtained wholesale or less than customary retail prices;
- (b) Falsely represented that prices at which their merchandise was offered were wholesalers' and jobbers' prices and represented large discounts from customary retail prices, through such statements, in catalogs, circulars, cards, and other advertising material as "You save 50 and 10% from the retail value," "The buy of a lifetime at 50% discount;" fact being their prices were approximately those at which such merchandise is customarily offered at retail and represented no substantial discount or saving to the purchaser;
- (c) Falsely represented that their business was "Over half a century old" through such statements in catalogs, circulars, cards and other advertising material as "Direct Jobber * * * for a Half Century" and "Our 56th Year," facts being it was not started until year 1930; and
- (d) Falsely represented that certain rings offered and sold by them were set with genuine rubies and sapphires through statement "10K, yellow gold, with ruby or sapphire," when in fact such settings were merely artificial or synthetic stones which resembled the genuine;

With effect of misleading and deceiving a substantial portion of the purchasing public in regard to their business status, and as to prices, quality, and character of their merchandise, whereby purchasing public was induced to and did buy substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Carb, Reichman & Luria, of New York City, for respondents.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Caroline R. Macher and Robert J. Macher, individually and trading as Macher Watch & Jewelry Co., and as Wholesale Watch & Jewelry Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Caroline R. Macher and Robert J. Macher are individuals trading as Macher Watch & Jewelry Co. and as Wholesale Watch & Jewelry Co., with their office and principal place of business located at 15 Maiden Lane, New York City, N. Y. Respondents are now and for more than 2 years last past have been engaged in the sale and distribution of watches, jewelry, silverware, electrical appliances, and other merchandise.

In the course and conduct of their business respondents cause their said products, when sold, to be transported from their place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in their said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business, and for the purpose of inducing the purchase of their said products, the respondents have made false and misleading representations with respect to their business status and with respect to the character, quality, and prices of their products, such representations being made by means of catalogs, circulars, and cards distributed among prospective purchasers, and by other means. Among and typical of such false and misleading representations are the following:

WHOLESALE WATCH & JEWELRY CO.
Successor to the Wholesale House of J. Macher
Direct Jobber of American Watches for
over half a century
30 to 50% DISCOUNT
from the manufacturers' established and
advertised RETAIL prices of WALTHAM,
ELGIN, and SWISS WATCHES

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An allowance on an old watch towards the
purchase of a HAMILTON, GRUEN, and
BULOVA

The Largest Stock of Watches in the City
Diamonds, Jewelry, Etc., 50 and 10%
Silverware: Plate $33\frac{1}{3}$ to 41%; Sterling
25 to 36% from RETAIL
Electric Household Appliances 35% from
the RETAIL Prices

Macher Watch & Jewelry Co.
Industrial Jobbers
Founded on 56 years' experience

In the catalogs and in other advertising material distributed by respondents as aforesaid there appear descriptions of numerous items offered for sale by respondents, and in connection with such items there appear certain figures purporting to represent the customary retail prices at which such articles are usually sold, such prices being designated by the respondents as "Retail" prices. These also appear in connection with such purported retail prices the prices at which respondents offer such articles for sale, which prices are much less than the purported retail prices. Among and typical of such representations are the following:

10K yellow gold (ring) with ruby or sapphire.
Gold encrusted Masonic emblem. Retail \$31.00

Our Price \$13.95
You save 50 & 10%

Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondents represent that they are wholesalers and jobbers, and that by reason thereof they are enabled to and do offer merchandise for sale to the purchasing public at prices which are far below the regular and customary retail prices for such merchandise; that the prices at which respondents offer their products for sale represent the wholesale or jobbers' prices of such products and represent large discounts and savings to the purchasers; that respondents' said rings are set with genuine rubies and sapphires; that respondents' business has been in operation for over half a century.

PAR. 3. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, the respondents are neither wholesalers nor jobbers but are retailers only, their sales being confined to members of the consuming public. The prices represented by respondents as the customary retail prices of their prod-

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ucts are in most instances exaggerated and fictitious prices and do not represent the prices at which such products are customarily sold at retail. The prices at which respondents offer their products for sale are in no sense wholesale prices or jobbers' prices and do not represent any discount or saving to the purchaser. In truth and in fact, such prices are retail prices and are the prices at which such products are customarily offered for sale and sold by respondents in the usual and normal course of business. The settings of respondents' said rings are not genuine rubies or sapphires but are artificial or synthetic stones having little or no value. Respondents' business has not been in operation for over half a century or for any period approximating such time, such business having been started about 1930.

PAR. 4. The word "Wholesale" as used by the respondents, as a part of one of their trade names, and the word "Jobbers" as used by respondents, in connection with their trade names, constitute within themselves, false and misleading representations that respondents are wholesalers or jobbers and are prepared to offer merchandise for sale at wholesale prices.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for dealing with wholesalers and jobbers of merchandise rather than with retail dealers, such preference being due to a belief that thereby lower prices and other advantages may be obtained.

PAR. 6. The use by the respondents of the aforesaid false and misleading representations has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of substantial quantities of respondents' products.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 12, 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Caroline R. Macher and Robert J. Macher, individually, and trading as Macher Watch and Jewelry Co., and as Wholesale Watch and Jewelry Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William T. Chantland, attorney for the Commission, and in opposition to the allegations of the complaint by Edward E. Reichman and Sidney A. Luria, attorneys for the respondent, before Randolph Preston, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and briefs in support of the complaint and in opposition thereto (oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Caroline R. Macher and Robert J. Macher, are now and since 1930 have been engaged in the sale and distribution of watches, jewelry, silverware, and other merchandise, with their place of business located at 15 Maiden Lane, New York, N. Y. Up until April 1939, respondents conducted their business under the trade name of Wholesale Watch and Jewelry Co., and since April 1939, the business has been conducted under the trade name Macher Watch and Jewelry Co.

PAR. 2. In the course and conduct of their business the respondents cause and have caused their merchandise, when sold, to be transported from their place of business in the State of New York to the purchasers of such merchandise located in various other States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their merchandise, have made many statements and representations to purchasers and prospective purchasers with respect to their business status and with respect to the quality, character, and prices of their merchandise. Such statements and representations are distributed among prospective purchasers by the means of catalogs, circulars,

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cards, and other advertising material. Among and typical of such representations are the following:

Wholesale Watch & Jewelry Co. Direct Jobber of American Watches for a Half Century.

Macher Watch & Jewelry Co. Industrial Jobbers.

Our 56th Year.

You Save 50 and 10% from the retail value.

The buy of a lifetime at 50% discount.

Recognized as industrial jobbers. We can sell nationally advertised merchandise at our jobbing prices.

New featured Mayfair watches presented for the first time. 40% to 50% discount from retail prices.

30% to 50% discount from the manufacturers' established and advertised retail prices on nationally known watches.

PAR. 4. Through the use of these representations and others of a similar nature the respondents represent and have represented that they are wholesalers and jobbers, and that the prices at which their merchandise is offered for sale are wholesalers' and jobbers' prices and represent large discounts from the customary retail prices of such merchandise. The respondents further represent that their business is over half a century old.

PAR. 5. The Commission finds that these representations are grossly exaggerated, false, and misleading. The respondents are in fact neither wholesalers nor jobbers but are retailers, their sales being confined to members of the consuming public. The prices of respondents' merchandise are not wholesalers' or jobbers' prices but are retail prices, being approximately the prices at which such merchandise is customarily offered for sale at retail. Respondents' prices do not represent any substantial discount or saving to the purchaser. Respondents have not been in their present business for over half a century. In fact, their said business was not started until the year 1930.

PAR. 6. The Commission further finds that in connection with certain rings offered for sale by the respondents, the following representation was made: "10K. yellow gold, with ruby or sapphire." By this means the respondents represented that the rings in question were set with genuine rubies and sapphires. The Commission finds that the settings of said rings were not in fact rubies or sapphires but were merely artificial or synthetic stones which resembled rubies and sapphires.

PAR. 7. The Commission further finds that the words "wholesale" and "jobbers" as used by the respondents as a part of and in connection with respondents' trade names constitute within themselves false

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and misleading representations that respondents are wholesalers or jobbers. The Commission finds also that there is a preference on the part of a portion of the purchasing public for dealing with wholesalers of merchandise rather than with retail dealers, such preference being due either to the fact that they are obtaining wholesale prices or prices less than the customary and usual retail prices, or to their belief that they are obtaining such prices.

PAR. 8. The Commission finds that the use by the respondents of the false and misleading representations herein set forth has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to respondents' business status and with respect to the prices, quality, and character of respondents' merchandise. As a result, the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondents' merchandise.

CONCLUSION

The aforesaid acts and practices of the respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by William T. Chantland, counsel for the Commission, and Edward E. Reichman, counsel for the respondents (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Caroline R. Macher and Robert J. Macher, individually and trading as Macher Watch and Jewelry Co. and as Wholesale Watch and Jewelry Co., or trading under any other name or names, their representatives, agents, and employees, directly or by implication, or through any corporate or other device, in connection with the offering for sale, sale and distribution of watches, jewelry, silverware, or any other merchandise in com-

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merce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Wholesale" or "Jobbers" or any other word of similar import, as a part of or in connection with respondents' trade name or names, or otherwise representing that respondents are wholesalers or jobbers.

2. Representing that the prices at which respondents offer their merchandise for sale are wholesale or jobbers' prices, or that respondents' prices represent any substantial discount from the customary retail prices of such merchandise.

3. Representing that respondents' business is "over half a century" old, or that said business was started at any time prior to 1930.

4. Representing that respondents' rings or other articles of jewelry are set with rubies, sapphires or other precious stones, when in fact such settings are only artificial or synthetic stones.

It is further ordered, That the respondents shall within 60 days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

THE STETSON SHOE COMPANY, INC., TRADING AS M. N.
ARNOLD SHOE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4050. Complaint, Mar. 6, 1940—Decision, Feb. 27, 1941*

Where a corporation engaged in manufacture of shoes and in interstate sale and distribution thereof—

Falsely represented that certain of its shoes were made from the hide of an alligator, through use, in catalogs and price lists, of legend "Alligator Calf," for shoes of which there is marked preference on part of substantial portion of purchasing public over those made from other leather, when in fact products in question were not thus made, but were composed of other leather so embossed as to simulate that of alligator;

With effect of misleading and deceiving a substantial portion of purchasing public into the erroneous and mistaken belief that its said products were made of certain designated kinds of materials when such was not the fact, and thereby of inducing such public to purchase substantial quantity of its said products;

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Harrington, Huxley & Smith, of Youngstown, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by the virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Stetson Shoe Co., Inc., a corporation trading as M. N. Arnold Shoe Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Stetson Shoe Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts with its office and principal place of business at South Weymouth, Mass. The respondent trades under the style and name of M. N. Arnold Shoe Co. The respondent is now and has been for more than 1 year last past engaged in the